

§ 1006.440

24 CFR Ch. IX (4-1-03 Edition)

available resources to overcome the performance problem(s).

§ 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action

HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

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AUTHORITY: 12 U.S.C. 1715z-13b; 42 U.S.C. 3535(d).

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§ 1007.1 Purpose.

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families

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who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets.

§ 1007.5 Definitions.

The following definitions apply in this part:

Department of Hawaiian Home Lands (DHHL) means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 *et seq.*).

Eligible entity means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

Family means one or more persons maintaining a household, and includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, or a single person.

Guarantee Fund means the Native Hawaiian Housing Loan Guarantee Fund under this part.

Hawaiian Home Lands means lands that:

(1) Have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(2) Are acquired pursuant to that Act.

HUD means the Department of Housing and Urban Development.

Native Hawaiian means any individual who is:

(1) A citizen of the United States; and

(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;

(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or

(iii) Birth records of the State of Hawaii.

Native Hawaiian family means a family with at least one member who is a Native Hawaiian.

Office of Hawaiian Affairs means the entity of that name established under the constitution of the State of Hawaii.

§ 1007.10 Eligible borrowers.

A loan guaranteed under this part may only be made to the following borrowers:

(a) A Native Hawaiian family;

(b) The Department of Hawaiian Home Lands;

(c) The Office of Hawaiian Affairs; or

(d) A private, nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

§ 1007.15 Eligible uses.

(a) *In general.* A loan guaranteed under this part may only be used to construct, acquire, or rehabilitate eligible housing.

(b) *Construction advances.* Advances made by the lender during construction are eligible if:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

§ 1007.20 Eligible housing.

(a) A loan guaranteed under this part may only be made for one to four-family dwellings that are standard housing, in accordance with paragraph (b), of this section. The housing must be located on Hawaiian Home Lands for which a housing plan that provides for the use of loan guarantees under this